

## **RDMD/Planning and Development Services**

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**DATE:** August 5, 2004

**TO:** Orange County Zoning Administrator

**FROM:** RDMD/PDS/Current and Advance Planning Services

**SUBJECT:** Public Hearing on Planning Application PA04-0045 for Variance

**PROPOSAL:** The applicant requests approval of a rear yard setback Variance to permit the construction of a new addition (game room) at the rear of the existing single-family dwelling. The rear yard setback requirement for this property is 16 feet (the property is a shallow building site). The proposed addition has a rear yard setback of 7 feet – 8 inches from the rear property line, which requires approval of a Variance prior to construction.

**LOCATION:** The project is located in the community of Emerald Bay, inland of Pacific Coast Highway at 335 Emerald Bay, Laguna Beach. Fifth Supervisorial District.

**APPLICANT:** Summer and Doug Killian, property owners  
Laidlaw Schultz Architects, agent

**STAFF** William V. Melton, Project Manager  
**CONTACT:** Phone: (714) 834-2541 FAX: (714) 834-3522

**SYNOPSIS:** PDS/Current and Advance Planning Services recommends Zoning Administrator approval of PA04-0045 for Variance subject to the attached Findings and Conditions of Approval.

### **BACKGROUND:**

The subject property is located in the inland portion of Emerald Bay. The lot is 6,816 square feet in area, measuring approximately 88 feet across the street frontage and an average depth of 80 feet. The site is developed with a single-family dwelling. The dwelling has three levels, which includes a basement level, a first floor and second floor levels. As originally submitted, the new addition, a game room measuring 16 feet – 6 inches by 15 feet – 4 inches, is located on the basement level. A deck was proposed above the game room is accessed from the living room on the first floor and the existing patio. The property has a depth of less than 100 feet and is classified as a “shallow building site”. The property also has an easement on the southerly property that provides access to the property at the rear (254 Emerald Bay).

On July 28, 2004, the applicant informed staff that the Emerald Bay Community Association increased the setback requirements for the room addition and required the deck above the room addition to be deleted from the plans. The original proposed setback of 6 feet has been increased to 7 feet – 8 inches. The Public Hearing notice stated that the setback requested was 6 feet from the rear property line. Since

the setback is being increased, staff feels there is no reason to re-notice the variance proposal. There are other issues with the proposal concerning lot coverage, and the Board of Directors has not given final approval to this proposal.

Emerald Bay has a certified Local Coastal Program (LCP). The LCP has a requirement that all properties on the ocean side of Pacific Coast Highway are also subject to regulations contained in Zoning Code Section 7-9-118 “Coastal Development” District. In general, property owners are required to obtain approval of a Coastal Development prior to demolishing a dwelling or making a large addition to an existing residence and/or construction of a new dwelling. Properties located inland of Pacific Coast Highway, such as the subject site, are not subject to the CD regulation and are not subject to obtaining a Coastal Development Permit for new construction.

### **SURROUNDING LAND USE:**

The project site and all surrounding properties are zoned R1 “Single-family Residence” District with a CD “Coastal Development” District overlay, and developed with single-family dwellings (see photo below).



## **REFERRAL FOR COMMENT AND PUBLIC NOTICE:**

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to three County Divisions and the Emerald Bay Community Association. As of the writing of this staff report, no comments raising issues with the project have been received from other County divisions. Emerald Bay has not given final approval to the project, but according to the applicant, preliminary approval has been given for the room addition with a revised setback.

## **CEQA COMPLIANCE:**

The proposed project is Categorically Exempt (Class 5, minor alterations in land use limitations such as setback variance) from the requirements of CEQA. Appendix A contains the required CEQA Finding.

## **DISCUSSION/ANALYSIS:**

The subject site averages 80 feet in depth. The R1 District has a normal rear setback requirement of 25 feet. However, under Zoning Code Section 7-9-128 “Exception to Building Lines Chart”, the required front and rear setbacks on a lot with an average depth between 75 feet and 100 feet can be reduced to 20 percent of the average depth. For the subject site, the front and rear setback requirement is 20 percent of 80 feet, which is 16 feet. The applicant’s proposed room addition and deck varies from 7 feet – 8 inches to 10 feet – 6 inches from the rear property line. The room addition is now proposed with measurements of 16 feet – 6 inches by 13 feet – 8 inches. The side yard setback is seven feet and conforms to the R1 District side yard setback standard. Because the proposed addition does not conform to the rear yard setback standard, a variance is required.

Because there are issues yet to be resolved between the applicant and the community association, this proposal has not received final Board of Directors approval. According to the applicant, the room addition with the increased setback and deletion of the roof deck has been preliminary approved. The final Emerald Bay approval will most likely be given when the 40 percent site coverage issue is resolved. This coverage is not a requirement of the R1 District. Since staff has maintained a policy that the Board of Directors approve the building plans before County action, staff is recommending a condition of approval that requires Emerald Bay approval prior to issuance of a building permit.

Many front yard and rear yard variances have been approved in Emerald Bay. Within 300 feet of the subject site there are approximately 25 approved variances. Several lots have multiple approved variances. The most recent variance approval was under PA03-0123 (approved in March of this year) on the adjacent property to the north, 337 Emerald Bay. This variance was approved for an encroachment into the rear setback area for an addition to the existing dwelling.

The reason for the many variances in Emerald Bay is the CCRs, which limit building height and allows setbacks of five feet from all property lines. Because in many cases the property owner is unable to build

to the R1 District height limit of 35 feet, structures are constructed with encroachments into the front and rear setback areas. Even though many variances have been approved, before this or any other variance request can be approved, the Zoning Administrator, in accordance with State and County planning laws, must be able to make the following variance findings listed below. If the Zoning Administrator cannot make these findings, the application must be disapproved.

1. There are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations.
2. Approval of the application will not constitute a grant of special privileges, which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with.

Staff is of opinion that the Zoning Administrator is able to make these two special variance findings. The special circumstance for approving the variance requested for this proposal is in Finding No. 7 of Appendix A. Because the requested variance is not unlike previously approved setback variances (most recently PA03-0123) staff can support the proposed the rear setback variance and makes a recommendation as follows.

**RECOMMENDED ACTION:**

PDS/Current and Advance Planning Services recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Continue proposal to a date after approval by the Emerald Bay Community Association; or,
- c. Approve Planning Application PA04-0045 for Variance subject to the attached Findings and Conditions of Approval.

Respectfully submitted

William V. Melton, Project Manager  
CAPS/Site Planning Section

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**APPENDICES:**

- A. Recommended Findings
- B. Recommended Conditions of Approval

**EXHIBITS:**

- 1. Applicant's Letter of Explanation
- 2. Site Photos
- 3. Site Plans

**APPEAL PROCEDURE:**

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$245.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to the RDMD/Planning and Development Services.